to a judgment in its home forum, the foreign court must decide for itself what is the true nature of the liability. See *Huntington* v. *Attrill*, 146 U. S. 657, 683–684, 13 Sup. Ct. 224, 234. *A fortiori*, then, in the principal case the court was clearly right in abiding by its own view of the nature of a tax. Any other decision would put the state in the peculiar position of collecting taxes for such states as regard the obligation as contractual, and refusing to collect the same sort of tax for other states that regard it as penal. See *Huntington* v. *Attrill*, [1893] A. C. 150, 155.

CONFLICT OF LAWS — REMEDIES: RIGHT OF ACTION — FOREIGN CONTRACT CONTRARY TO PUBLIC POLICY OF FORUM. — Jewelry delivered to an express company for carriage from New York to Virginia was lost *en route*. The contract of shipment, limiting the company's liability to fifty dollars, was valid in New York, where it was made, but was invalid by statute in Virginia, where suit was brought. *Held*, that the plaintiff may recover the full value of the goods lost. *Adams Express Co.* v. *Green*, 72 S. E. 102 (Va.).

The best rule is that the law of the place of contracting should govern the validity of a contract. See 23 HARV. L. REV. 260, 270–272. But in the last analysis a sovereign state, subject in this country to the federal and state constitutions, may deny relief or enforce liability in its courts as it pleases. Since, however, most sovereign states are interested in the administration of justice, a valid contract will usually be enforced. *Forepaugh* v. *Delaware, etc. R. Co.*, 128 Pa. St. 217, 18 Atl. 503; *Greenwood* v. *Curtis*, 6 Mass. 358. Yet if the court believes that justice will result from not enforcing the contract, there is nothing to prevent a denial of relief. See 1 WHARTON, CONFLICT OF LAWS, 3 ed., § 4a. So in the principal case the contract was not enforced because it was said to be against the public policy of the state. *The Kensington*, 183 U. S. 263, 22 Sup. Ct. 102; *Chicago, B. & Q. R. Co.* v. *Gardiner*, 51 Neb. 70, 70 N. W. 508. Public policy differs in the various jurisdictions, and the canons for determining public policy are so indefinite, that it is not surprising that there are cases *contra*. *Fonseca* v. *Cunard Steamship Co.*, 153 Mass. 553, 27 N. E. 665; *Talbott* v. *Merchant's Despatch Transportation Co.*, 41 Ia. 247. Criticism of such cases would only involve us in questions of fact or economic principles. See 2 WHARTON, CONFLICT OF LAWS, 3 ed., § 471 c.

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — ADMINISTRATION OF ESTATE OF ABSENTEE IRRESPECTIVE OF DEATH. — A Massachusetts statute provided that wherever a resident disappeared without leaving any known agent, the court might order the seizure of his property and after due notice appoint a receiver. If the absentee did not appear within fourteen years after his disappearance, or one year after the appointment of a receiver, if a receiver was not appointed within thirteen years after the date of his disappearance, his title was barred and his next of kin were entitled to distribution. *Held*, that the statute is constitutional. *Blinn* v. *Nelson*, 32 Sup. Ct. 1. See NOTES, p. 377.

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — REGULATION OF FIRE INSURANCE RATES. — A Kansas statute provided for a regulation of the rates of fire insurance companies. *Held*, that the statute is constitutional. *German Alliance Ins. Co.* v. *Barnes*, 189 Fed. 769 (Circ. Ct., D. Kan.). See NOTES, p. 372.

CONTEMPT — POWER TO PUNISH FOR CONTEMPT — NATURE OF CRIMINAL CONTEMPT. — The respondent was charged with contempt of court for disobeying an injunction. He moved to dismiss the charges, because the offense had been committed more than three years before the charges were filed.

Held, that the criminal Statute of Limitations does not apply to contempt of court. *In re Gompers*, 39 Wash. L. R. 761 (D. C., Sup. Ct.). See NOTES, p. 375.

CONTRACTS — CONTRACTS UNDER SEAL — SUIT BY ONE NOT A PARTY TO CONTRACT. — The defendant agreed with the plaintiff's mother by a contract under seal to support her for life. On the defendant's failure to keep his agreement, the plaintiff was compelled to support his mother. *Held*, that the plaintiff cannot recover from the defendant on the contract. *Case* v. *Case*, 203 N. Y. 263, 96 N. E. 440.

The strict regard which the law has held for the form of instruments under seal has usually permitted only the parties themselves to such an instrument to enforce it. *Storer* v. *Gordon*, 3 M. & S. 308; *Chesterfield, etc. Colliery Co.* v. *Hawkins*, 3 H. & C. 677. A principal cannot enforce a contract under seal made for him by an agent unless clearly made in the principal's name. *Townsend* v. *Hubbard*, 4 Hill (N. Y.) 351. *Cf. Borcherling* v. *Katz*, 37 N. J. Eq. 150. In jurisdictions where importance is still attached to a seal, the beneficiary of a contract under seal made for the benefit of a third party cannot sue upon it. *Inhabitants of Farmington* v. *Hobert*, 74 Me. 416; *Cocks* v. *Varney*, 45 N. J. Eq. 72, 17 Atl. 108. Many jurisdictions, however, have been more liberal and have allowed the beneficiary of a contract under seal to sue thereon. *Coster* v. *Mayor, etc. of Albany*, 43 N. Y. 399; *Rogers* v. *Gosnell*, 51 Mo. 466. This is usually the case where the promisor's covenant is to assume a mortgage. *North Alabama Development Co.* v. *Orman*, 55 Fed. 18; *Central Trust Co.* v. *Berwind-White Coal Co.*, 95 Fed. 391. The plaintiff in the principal case should not be allowed to recover as a beneficiary, since apparently it was intended that he should only be incidentally benefited. *Durnherr* v. *Rau*, 135 N. Y. 219, 32 N. E. 49; *N. O. St. Joseph's Association* v. *Magnier*, 16 La. Ann. 338. But, it is submitted, the plaintiff had a quasi-contractual right of action for having discharged an obligation owed primarily by the defendant. *Rundell* v. *Bentley*, 53 Hun (N. Y.) 272, 6 N. Y. Supp. 609. See 24 HARV. L. REV. 583.

CONTRACTS — DEFENSES — INABILITY OF PLAINTIFF TO PERFORM — REPUDIATION ON INSUFFICIENT GROUND AS WAIVER OF GOOD EXCUSE. — A seller attempted to take advantage of the provision of an instalment contract giving the right of rescission in case of late payment. In a suit by the buyer, the jury found that this right was waived by repeatedly accepting overdue payments. *Held*, that the seller may not introduce evidence of the buyer's insolvency as a further excuse. *Honesdale Ice Co.* v. *Lake Lodore Improvement Co.*, 81 Atl. 306 (Pa.).

One defense should not be waived by advancing another consistent one. See WILLISTON, SALES, § 495. Thus, a servant's dismissal is justifiable if a valid excuse existed though at the time the master alleged groundless reasons. *Green* v. *Edgar*, 21 Hun (N. Y.) 414; *Boston Deep Sea Fishing and Ice Co.* v. *Ansell*, 39 Ch. D. 339. For the servant cannot show good service or excuse for not serving well. See 19 HARV. L. REV. 63. But a lien is lost if an invalid ground is advanced for non-delivery of the goods. *Boardman* v. *Sill*, 1 Camp. 410, note; *Witt* v. *Dersham*, 146 Mich. 68, 109 N. W. 25. And there can be no objection to a deed as insufficient or an offer to pay as not in legal tender, if refusal is based upon other reasons. *Keller* v. *Fisher*, 7 Ind. 718; *Beatty* v. *Miller*, 94 N. E. 897 (Ind.). If repudiation on an invalid ground justifies the assumption that the tender will be refused though an existing breach be healed, repudiation excuses non-completion. *Lathrop* v. *O'Brien*, 57 Minn. 175, 58 N. W. 987; *Braithwaite* v. *Foreign Hardwood Co.*, [1905] 2 K. B. 543. *Cf. Clegg* v. *Southern Ry. Co.*, 135 N. C. 148, 47 S. E. 667. But if the breach is incurable, repudiation cannot be the cause of the plaintiff's non-performance,